

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY EIGHTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO: 1003 of 2005

Between:

J.N.Chowdary,

Mallikarjunudu, aged 50 yrs,

C/o B.Suresh Kumar, D.No.36-92-242/33/1,

Srinivasa nagar, Visakhapatnam.

... PETITIONER

AND

The Municipal Commissioner,
Municipal Corporation of visakhapatnam,

Municipal corporation Buildings,

Visakhapatnam.

...RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of writ of Mandamus declaring the action of the respondent in interfering with structures of the building of petitioner as highly arbitrary, illegal and violation of Art 14 of constitution of India and consequentially direct the respondent to consider and dispose of the explanation

dt.3-1-2005, in respect of the building of the petitioner situated at D.No.36-92-242/33/1, Srinivasa Nagar, Visakhapatnam.

Counsel for the Petitioner: MR.T.M.K.CHAITANYA

Counsel for the Respondent: MR.T.S.VENKATARAMANA

The Court, at the admission stage, made the following:

ORDER:

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent. Both expressed no objection for disposal of the writ petition at the admission stage.

2. This writ petition is filed seeking a Mandamus declaring the action of the respondent in interfering with the building of the petitioner situated at D.No.36-92-242/33/1, Srinivas Nagar, Visakhapatnam, in spite of submission of explanation dated

03-01-2005, as illegal and arbitrary and consequently direct the respondent to consider and dispose of the said explanation submitted by the petitioner.

3. The facts in brief, are that petitioner, who obtained construction permission from the respondent-Corporation through B.A.No.2003-BA-10056/ACP-III/G7, was served with a notice dated 13-12-2004, wherein it was stated the petitioner commenced the construction work without issuing the commencement of work notice as required under Section 440 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') which is also applicable to VUDA and accordingly he was called upon to explain as to why action should not be taken against him. To the same, petitioner submitted his explanation dated 03-01-2005. In spite of the said explanation submitted by the petitioner, the respondent is trying to demolish the construction of the said building without serving any notice under Section 636 of the Act.

4. Learned counsel for the petitioner submitted that only after the Corporation comes to the conclusion that the construction is in violation of the statutory provisions, notice as contemplated under Section 636 of the Act has to be issued and then take necessary action.

5. Having regard to the facts and circumstances of the case, the respondent is directed not to demolish the disputed construction that was already made, without passing appropriate orders on the said explanation submitted by the petitioner, in accordance with law. Till appropriate orders are passed on the petitioner's explanation, status quo obtaining as on today with regard to the property in question, shall be maintained. If already final orders are passed, it is open for the respondents to proceed further, in accordance with law.

With the above observations, the writ petition is disposed of at the admission stage.

N.V. RAMANA, J

January 28, 2005

MRR

Copy to:

1. The Municipal Commissioner,
Municipal Corporation of visakhapatnam,

Municipal corporation Buildings,

Visakhapatnam.
2. Two C.D. Copies.